

**STATEMENT OF ROBERT M. FRIEND
ACTING DEPUTY ASSISTANT SECRETARY OF LABOR
FOR MINE SAFETY AND HEALTH
BEFORE THE
SUBCOMMITTEE ON WORKFORCE PROTECTIONS
EDUCATION AND THE WORKFORCE COMMITTEE
UNITED STATES HOUSE OF REPRESENTATIVES
MARCH 1, 2006**

Mr. Chairman:

I am pleased to appear before you today to discuss the ongoing work of the Mine Safety and Health Administration (MSHA). MSHA works diligently to promote mine safety and health. We want nothing more than to send every miner home safely at the end of every shift, every day.

We have been moving closer to that goal every year. In recent years, the mining industry has experienced historic lows in injury and fatality rates. In 1978, the first year MSHA operated under the new Mine Act, 242 miners died in mining accidents. Last year, there were 57 mining fatalities, 22 at coal mines and 35 at metal and nonmetal mines. From 2000 to 2005, the mining industry experienced a 33% decrease in fatal accidents nationwide – with coal mines seeing a 42% decline. The coal mine lost-time injury rate declined one-third over the last five years. These are important and compelling statistics one must consider in placing current mine safety and health conditions in a proper perspective.

MSHA inspectors vigorously enforce the law – with the support of the entire agency, top to bottom. Last year, MSHA issued the highest number of citations and orders since 1994. In recent years, MSHA increased its use of “withdrawal orders” to gain compliance with the standards. This is a powerful enforcement tool as withdrawal orders require miners to be removed from the area affected by the violation, often resulting in disruptions to production. The number of withdrawal orders increased 20% over the last five years when compared to the previous five years. MSHA issued more “withdrawal orders” in both 2004 and 2005 than in any year since 1994. It is important to note that any MSHA violation must be abated within a specified time frame before the penalty is assessed. In the case of withdrawal orders, the hazard must be abated before miners are allowed to work in the area or activity affected by the hazard.

The statistics show our strong enforcement record very clearly. From FY2000 to FY2005:

- Total Citations and Orders issued by MSHA at all mines increased by 5% (119,183 to 125,161)
- Total Citations and Orders issued at coal mines increased by 19% (56,870 to 67,756)
- Total “Significant and Substantial” Citations and Orders issued at coal mines increased by 13% (23,586 to 26,717)

- MSHA enforcement personnel have significantly increased the issuance of withdrawal orders to coal mine operators who exhibit an unwarrantable failure to comply with the regulations. Unwarrantable failure orders are one of the most severe enforcement actions inspectors can take and in each of the last two years MSHA inspectors issued more such orders than in any year in the last ten years.

While enforcement activity and the number of miners went up from 2000 to 2005, the number of coal mines fell. There were 2,124 coal mines in 2000 and 1,982 in 2005 (through the third quarter) and 108,098 coal miners in 2000 and 112,449 in 2005 (through the third quarter). Clearly, MSHA inspectors continue to vigorously enforce the law – with the support of the entire agency, top to bottom.

I want to make something clear. MSHA's inspectors diligently and vigorously enforce the law. However, the Mine Act does not give MSHA the authority to preemptively close entire mines because of the number or frequency of violations. Nor does the Mine Act include the authority to close or seize a mine because of unpaid fines or penalties.

While we are proud of our enforcement and compliance record, we know there is more to do. We are currently engaged in a thorough investigation of the recent tragic accidents at Sago and Alma Mines. We are determined to learn from these accidents.

First, I want to publicly recognize the mine rescue teams who responded to the accidents at Sago Mine and Alma #1 Mine. These teams demonstrated exceptional bravery and professionalism, and they should be commended for their efforts, as well as for their dedication to their fellow miners.

I would like to give you an update on the Sago Mine and Alma Mine #1 accident investigations. We have finished mapping the underground areas of the Sago mine and have completed nearly all of the witness interviews. Thus far, MSHA and representatives from the State of West Virginia have interviewed forty-six individuals. We have completed an evaluation of the geology of the roof in the abandoned area of the mine where the explosion occurred. In conjunction with the National Institute for Occupational Safety and Health (NIOSH), we are developing a protocol to test the materials used in the Sago mine to seal the area where the explosion occurred. At this time we have no information that would suggest that the explosion is related to any conditions that MSHA enforcement personnel observed and cited at the mine before the explosion.

We have completed the investigation of the underground areas of the Alma #1 mine with the exception of the immediate vicinity where the fire occurred. There are significant roof falls in this area that will have to be removed before the underground portion of the investigation can be completed. At this time we have interviewed 14 individuals and the remaining interviews should be completed within the next several weeks.

As standard operating procedure, MSHA conducts an internal review after every major accident. We will look carefully to see if MSHA followed its own policies and procedures with respect to Agency activities prior to and during the accident. This report will be shared with this

committee and made public. MSHA has always viewed its internal review process as an opportunity to take a hard and honest look at how we do our job and to use that information to improve how we do business. Past reviews have been comprehensive and objective examinations that resulted in responsible recommendations for improvement. The Government Accountability Office and the Department's Office of the Inspector General are also conducting independent reviews of various aspects of MSHA's programs.

Despite the progress the mining industry has achieved in the area of health and safety, there is always room for improvement. The recent fatalities in West Virginia, along with other recent fatalities, are vivid reminders that we must continually seek new and improved accident prevention measures. And when accidents occur, we need to give miners the best possible chance to survive. I want to share some of the actions MSHA is currently taking in the areas of rulemaking, mining technology, mine rescue operations, and civil penalty assessments.

Emergency Temporary Standard

MSHA's safety and health standards are constantly being reviewed and adjustments made to improve them or address newly recognized hazards. As a direct result of the recent two West Virginia accidents, we will soon be issuing an Emergency Temporary Standard to improve safety in underground mines in the areas of: underground supplies of oxygen generating breathing devices, training, lifelines, and accident notification.

Technology

There has been much discussion surrounding the availability of technology and equipment that, if available to miners during and after fires and explosions, could increase their chances for survival. MSHA constantly searches for and evaluates emerging technologies that can be used to protect miners. On January 25, 2006, MSHA published in the Federal Register a Request for Information (RFI) on Underground Mine Rescue Equipment and Technology.

MSHA is currently in the process of evaluating advanced underground mine communication and tracking systems. The Personal Emergency Device (PED) system is a one way "through the earth" communication system used in Australia, but only used in about a dozen underground mines in the U.S. MSHA is evaluating the PED at four different U.S. underground coal mines, and plans to evaluate the system at the only U.S. mine with a surface-mounted antenna. Information on PED performance will also be collected in Australian coal mines. Although the PED could send evacuation instructions to miners in the early stages of a fire, system limitations already noted in MSHA's field evaluations may seriously compromise the reliability or true usefulness of the PED during a U.S. mine emergency. These shortcomings include the vulnerability of commonly-installed underground antennas in the event of a fire or explosion, signal loss issues, range limitations, and potential interference with other mine communication systems.

The Tracker Tagging System is an MSHA-approved tracking system for use in underground mines. A remote unit, carried by a miner, transmits its location to a "beacon" receiving unit as the miner passes the beacon. Tracking of miners is limited to identifying their location in the

"zone" between two beacons where any given transmitter is located, and beacons are commonly spaced at 3,000 – 4,000 ft. intervals. While some have advocated mandating its use in underground mines in the U.S., little is known about the system's performance. There are no underground mines in the U.S. using the Tracker Tagging System. While it is used in several mines in Australia, it is used in just one underground coal mine in that country, and one coal mine in China.

Both the Tracker Tagging system and the PED system must be further evaluated and their effectiveness tested before rushing into a decision to mandate their use in underground mines. To that end, in a cooperative effort with the manufacturer of both systems, MSHA and the West Virginia Board of Coal Mine Health and Safety will visit four mines in Australia this month to conduct further field evaluations of the two systems. The issues reported in U.S. mines regarding signal loss or "shadow" zones will be further investigated to accurately determine the nature of these anomalies.

Other available communication technologies for consideration are actively sought through the RFI. MSHA is soliciting technical presentations or written comments on underground communications and systems for tracking underground miners and will hold a public meeting specifically for that purpose on March 13th at the National Press Club in Washington, D.C. We are hopeful that the information gathered at this meeting, together with the conclusions drawn following the field evaluations of the PED and Tracker systems in both the United States and Australia, will help direct MSHA and all other concerned parties in our efforts to provide the best available communications technologies to miners in the event of an emergency underground.

Furthermore, in response to the recent RFI noted above, MSHA has received more than 70 proposals from manufacturers and distributors of emergency communication and tracking systems. Additional proposals continue to come in on a daily basis. MSHA's Technical Support Directorate is currently reviewing these products and proposals and will assist interested manufacturers in obtaining approval for the equipments' use in underground mines. For our initial reviews we are prioritizing the emergency communications or tracking systems that do not rely on a wire back-bone and that have the greatest potential to remain functional in the event of a roof-fall, inundation, fire, or explosion. From the over 70 proposals received, MSHA has initially selected several promising communication systems to evaluate based on the following criteria: precise tracking and 2-way voice preferred capability; survivability in a fire or explosion; current availability; and capability of complying with MSHA requirements.

To help expedite and standardize the evaluation of these existing and promising technologies, a mine communications partnership is being formed with membership consisting of the National Institute for Occupational Safety and Health (NIOSH), MSHA, the Bituminous Coal Operators Association (BCOA), the United Mine Workers of America (UMWA), the United Steelworkers, the National Mining Association (NMA), and the State of West Virginia. The primary goals of this partnership are to establish general performance expectations for mine emergency communications systems, establish uniform and fair criteria for testing and evaluating systems, and to conduct in-mine tests on systems. A secondary goal is to identify gap areas that should be addressed through research.

The State of West Virginia, MSHA, and NIOSH are co-sponsoring the International Mining and Health Safety Symposium on April 20-21, 2006. The symposium will bring together technology developers, equipment manufacturers, the Federal Government, the State of West Virginia, organizations representing the mining community, and other countries to discuss the development, approval, and adoption of state-of-the-art technologies and mining methods. Wheeling Jesuit University will host the symposium at the Robert C. Byrd National Technology Transfer Center and the Civic Center in Wheeling, WV.

MSHA is working with the BCOA and the NMA to jointly develop a template on mine rescue preparedness. This document will describe standardized mine emergency procedures related to mine rescue organization, lines of communication, and establishing lines of authority. In addition, MSHA has sought information from the entire mining community, including labor, industry, academia, and local first-responders on improvements to mine rescue preparedness.

Civil Penalty Assessments

Assessments are civil penalties (fines) levied on mine operators, independent contractors working on mine property, agents of operators or contractors, or, in some cases, individual miners, for violating safety or health standards or sections of the Mine Act. The process of determining penalty amounts is governed by the criteria included in the Mine Act and federal regulations. The penalty assessment process is administered by an MSHA office separate from the enforcement arms of the agency to ensure the objectivity of the fines proposed for violations. The Office of Assessments implemented the most recent guidelines for proposing civil penalties in 2003.

These penalties range from \$60 to a statutory maximum of \$60,000. The \$60 fine is generally imposed for less serious, timely abated violations that occur in mines with low violation histories. More serious violations may receive a computer-generated regular formula assessment that assigns points based on criteria specified in the Mine Act. The most egregious violations may receive higher assessments with proposed penalty amounts determined by assigned specialists. The statutory maximum of \$60,000 can be imposed for regular formula or special assessments.

Proposed civil penalty amounts are determined using five statutory criteria in the Mine Act:

- the size of the operation,
- the operation's history of violations,
- the negligence of the operator,
- the gravity of the violation, and
- the degree of good faith the operator exhibits in correcting the violation.

A sixth statutory criterion, the ability of the operator to continue in business, is taken into account only after the amount of the fine is proposed and presented to the operator. The operator must provide convincing evidence of financial hardship and inability to continue in business. In these cases, MSHA may adjust the fine.

If the mine operator thinks the proposed penalty is too high, the operator can contest the penalty. The contested penalty first goes to an administrative law judge of the Federal Mine Safety and Health Review Commission who can uphold the original penalty, vacate the penalty, reduce the penalty, or (in rare instances) increase the penalty. If the operator is dissatisfied with that result, the operator can ask the full Federal Mine Safety and Health Review Commission to hear the case. If the Commission takes the case and the operator is dissatisfied with that result, the operator can appeal to the Court of Appeals. Sometimes this process takes several years. A case may ultimately go to the Supreme Court.

Operators have 30 days to pay or contest their fines once they are assessed. If the fine is not contested, it is considered a final order of the Commission after the 30 days. If these fines are not paid within 30 days, MSHA begins contacting the operator and 8% interest begins to accrue. If the debt remains unpaid for 90 days, an additional non-payment penalty of 6% begins to accrue, retroactive to the date the fine became final.

Penalties are considered debts under the provisions of the Debt Collection Improvement Act of 1996. When a debt is delinquent more than 180 days, MSHA refers the debt to the Department of the Treasury for collection. Treasury may attempt to collect the debt directly, refer the debt to a private collection agency, collect the debt by offsetting Federal payments made to the debtor, or, ultimately, refer the debt to the Department of Justice for collection. If this process is unsuccessful, MSHA may terminate collection of the debt and report it to the Internal Revenue Service to be included in the company's income tax liability as taxable income.

MSHA cannot close a mine if it has too many fines or does not pay the fines assessed. The Mine Act does not give MSHA that authority. MSHA is neither soft on enforcement nor soft on assessments. This Administration stands by its assessment record. Over the last five years, MSHA proposed 21 percent more penalties at the \$10,000 or higher level than during the previous five years. The total dollar value was up by 16 percent during this same period of time.

Approximately 6% of citations and orders are contested. Litigation at the Commission or in federal court impacts a large percentage of contested proposed assessments. For assessments contested between 1995 and 2005, 46 percent of the penalties were reduced and the average reduction in the penalty was 47 percent. The Administration has already proposed legislation to increase the maximum civil penalty for flagrant violations from \$60,000 to \$220,000. Additionally, I been directed to re-examine the penalty amounts and MSHA will soon propose rule making revisions to the penalty schedule (subject to the statutory \$60,000 penalty cap).

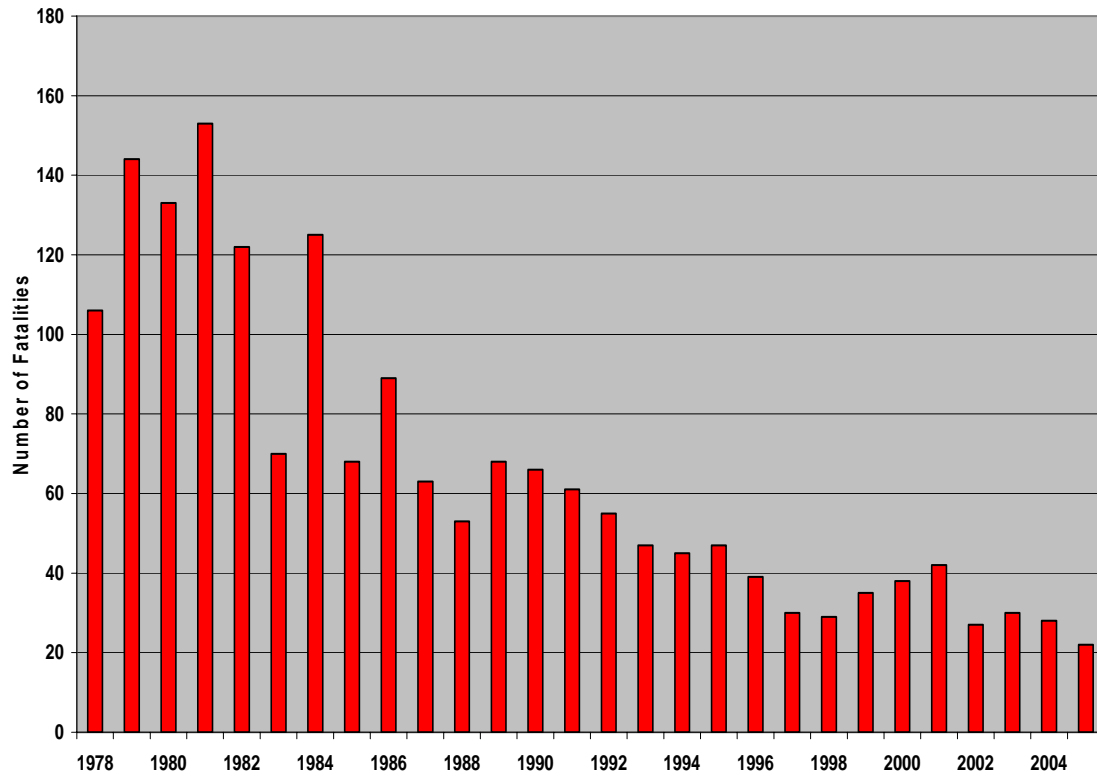
MSHA has also filed two lawsuits in February in the U.S. District Court for the Eastern District of Kentucky seeking injunctions against two separate mine operators who have chronically failed to pay assessed civil penalties for violations of the Mine Act. The complaints ask that both operators be enjoined from failing to pay penalties for future violations of the Mine Act and that both be required to post a bond with the court to guarantee future compliance with the law. MSHA is also evaluating other cases involving operators who have refused to pay civil penalties and will seek injunctions against them where appropriate.

Finally, it is important to note that any MSHA violation must be abated within a specified time frame even before the penalty is finally assessed. In the case of withdrawal orders, the hazard must be abated before miners are allowed to work in the area or activity affected by the hazard.

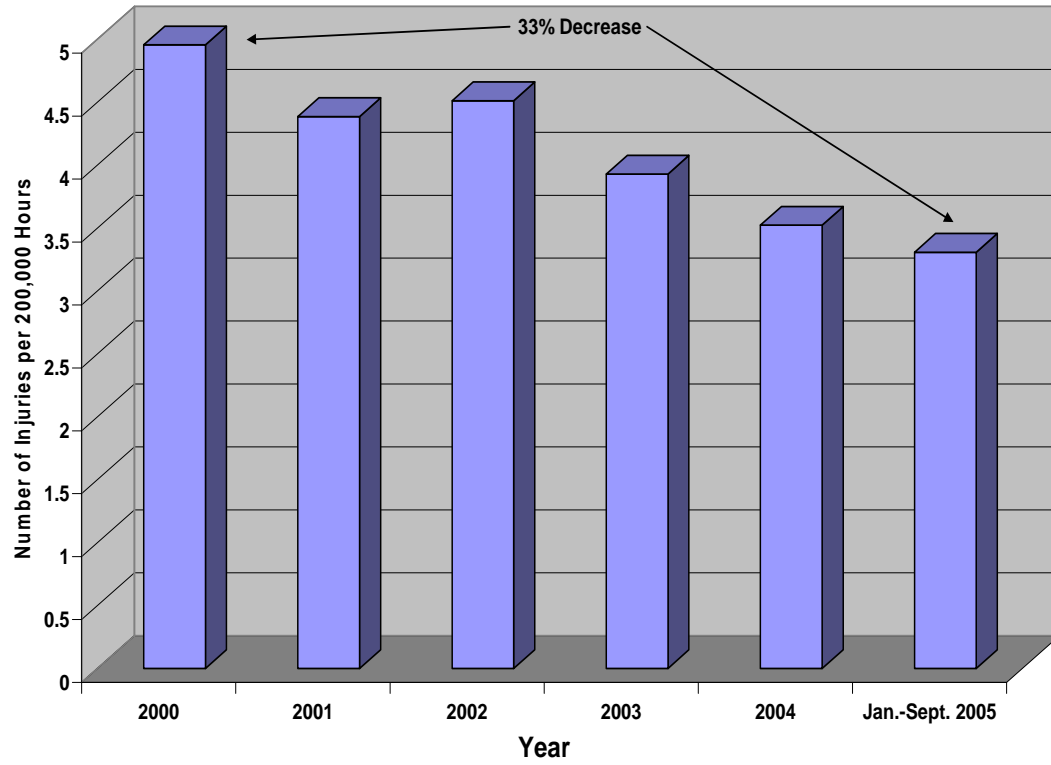
Every employee at MSHA is dedicated heart and soul to the agency's mission. Every employee at MSHA lives and breathes for the day when there are no fatalities, no injuries, and no occupational illness among all of this country's miners. Every employee at MSHA strives every second of every day to reach our goal: sending every miner in this country home to family and friends, safe and healthy, at the end of every shift, every day. We will not rest until that happens.

Thank you.

Coal Mining Fatalities 1978 - 2005



NFDL Injury Incidence Rates - Coal Mining
CY 2000 through Jan-Sept 2005



Fatal Injury Incidence Rates - Coal Mining
CY 2000 through Jan-Sept 2005

